



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,661	03/09/2001	Victor Keith Blanco	MS1-770US	7533

22801 7590 08/11/2004

LEE & HAYES PLLC
421 W RIVERSIDE AVENUE SUITE 500
SPOKANE, WA 99201

EXAMINER

NGUYEN, KIM T

ART UNIT	PAPER NUMBER
----------	--------------

3713

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/802,661

Applicant(s)

BLANCO, VICTOR KEITH

Examiner

Kim Nguyen

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 45-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 45-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/2, 3/19, & 5/11/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The amendment filed on May 14, 2004 has been received and considered. By this amendment, claims 21-44 have been canceled, claims 45-51 have been added and claims 1-20, and 45-51 are now pending in the application.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a) In claim 14, line 7, the claimed limitation "soundtracks" is ambiguous. It is not clear if the "soundtracks" refers to the "stored audio tracks" in claim 14, line 4, or the "created soundtrack" in claim 14, line 5.

- b) Claims 15-20 are rejected as being dependent in the rejected base claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3713

4. Claims 1-20 and 45-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano (US patent No. 6,309,301) in view of Van Ryzin (US patent No. 6,393,430).

a. As per claim 1, Sano discloses a game console comprising a memory coupled to a processor (Fig. 6; col. 5, line 67; and col. 6, lines 1-4); a console application configured to allow selection of audio tracks (col. 13, lines 29-31). Sano does not explicitly disclose creating a soundtrack. However, Van Ryzin discloses creating a soundtrack containing selected audio tracks (col. 2, lines 32-38). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to configure the console application of Sano such that the console application of Sano is capable of creating a soundtrack containing the selected audio tracks in order to facilitate selection of specific list of audio tracks.

b. As per claim 2, and 4-10, Sano discloses a hard disk drive (col. 11, line 23). Further, implementing a hard disk drive to a game console using a CD, DVD, game disc as a storage medium, retrieving audio data from an online source and storing soundtrack in a memory as a WMA file, and retrieving audio tracks from audio source would have been well known to a person of ordinary skill in the art at the time the invention was made. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement a well known hard disk drive to the game console of Miyamoto in order to facilitate storing and retrieving data to the game console.

c. As per claim 3, Sano discloses playing soundtracks through the game console (col. 8, lines 42-46).

Art Unit: 3713

d. As per claim 11-13, Sano discloses associating the soundtrack with the game (col. 13, lines 29-31). Further, outputting a soundtrack associated with a specific user who shares a device with a plurality of users and listing all available soundtracks would have been well known.

e. As per claim 14 and 18, refer to discussion in claim 1 above. Further, Sano discloses a second user interface to facilitate playback of soundtracks (col. 5, lines 6-8). Sano does not explicitly disclose a first user interface. However, Van Ryzin discloses a first user interface to facilitate selection of stored audio tracks (col. 4, lines 32-36). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the first user interface of Van Ryzin to the game console of Sano in order to allow the player to select a specific favorite soundtrack.

f. As per claim 15-17, As per claim 15-17, refer to discussion in claim 10-12 above.

g. As per claim 19-20, refer to discussion in claim 13 above.

h. As per claim 45, associating a name with a created soundtrack would have been well known to a person of ordinary skill in the art at the time the invention was made.

i. As per claim 46-48, refer to discussion in claims 1 and 14-15 above.

j. As per claim 49, Sano discloses identifying audio tracks in the game console (col. 8, lines 35-39).

k. As per claim 50-51, identifying audio tracks from an online source or a plurality of audio sources would have been well known.

Response to Arguments

5. Applicant's arguments filed on May 14, 2004 have been considered but are moot in view of the new ground of rejection.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9306, (for formal communications; please mark "EXPEDITED
PROCEDURE")

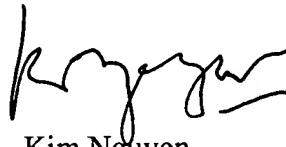
Hand-delivered responses should be brought to Crystal Plaza II, Arlington, VA
Second Floor (Receptionist).

Art Unit: 3713

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Nguyen whose telephone number is (703) 308-7915. The examiner can normally be reached on Monday-Thursday from 8:30AM to 5:00PM ET.

The central official fax number is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

A handwritten signature in black ink, appearing to read 'Kim Nguyen', with a stylized flourish at the end.

Kim Nguyen
Primary Examiner
Art Unit 3713

kn

Date: August 5, 2004